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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 613

SOUTHERN PACIFIC COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JANUARY 24, 1939.

CERTIORARI GRANTED MARCH 6, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 613

SOUTHERN PACIFIC COMPANY, PETITIONER,

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 27, 1939.

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42403

SOUTHERN PACIFIC COMPANY, Plaintiff,

vs.

THE UNITED STATES OF AMERICA

[Ratings: Shipments moving over non-land-grant mileage of Southern Pacific Company via Klamath Falls, Ore.]

I. PETITION—Filed April 4, 1933

The Honorable Court of Claims:

The Southern Pacific Company, plaintiff, respectfully represents:

I

Plaintiff is a corporation duly created, organized and existing under the laws of the State of Kentucky, and as such corporation now is, and was during all the times hereinafter mentioned, engaged as a common carrier by railroad in the transportation of persons and property, in and through various states of the United States. Certain parts [fol. 2] of the lines operated by plaintiff were constructed with the aid of grants of land by the United States.

II

At various times during the year 1931, and thereafter, to and including March 5, 1932, plaintiff, by itself or in participation with other carriers, transported various shipments of property of the United States at the request of the defendant, by its War and other Departments, between various points in the United States.

All said shipments were made upon bills-of-lading which were issued by plaintiff, or other carrier participating in the transportation, according to a certain form prescribed by defendant, and which expressly showed that each of said bills-of-lading was "subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier." Also, all said

bills-of-lading were duly accomplished to show delivery of the said shipments, and accomplished also in all other respects as required by the terms of said bills-of-lading, and of instructions therefor issued by defendant, and, in accordance therewith, charges for all said transportation were made payable to plaintiff.

III

Plaintiff presented to the defendant its respective bills, prepared on the authorized forms of defendant, for charges for all said transportation based upon the certain tariffs of your petitioner, and/or other carriers participating in the [fol. 3] transportation, and which certain tariffs were properly and legally applicable to commercial shipments, as well also to shipments for defendant, but, notwithstanding the said charges were so stated and presented, and were legally binding upon defendant, the General Accounting Office and the Disbursing Officers of the defendant refused to pay the whole of said charges, and paid only certain less amounts, so that there still is due to plaintiff a total balance of $932.97. And plaintiff says that it accepted under protest the certain less amounts mentioned herein, and that it at no time acquiesced therein.

IV

Annexed to this petition, and made a part hereof, is a statement marked "Exhibit to Petition", showing the details of the services performed, as aforesaid, namely, designating numbers of plaintiff's bills, designating numbers of Government bills-of-lading and dates thereof, points between which transportation was performed, correct amounts of freight charges (after deducting any differences accepted by plaintiff), amounts allowed, and amounts of balances claimed, and also General Accounting Office Settlement numbers and dates, all in respect of plaintiff's bills enumerated in said Exhibit.

V

Wherefore, plaintiff says there is now justly due and owing it by the United States the sum of $932.97, exclusive of all just credits and set-offs, for which amount it prays judgment, no assignment or transfer of the aforesaid claims or any interest therein having been made.

[fol. 4] Plaintiff has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against that Government, and believes the facts stated in this petition to be true.

Southern Pacific Company, Plaintiff, by Charles H. Bates, Its Attorney in Fact.

(Power of Attorney filed in Case C-41)

Duly sworn to by Charles H. Bates. Jurat omitted in printing.

(Here follow four photolithographs, side folios 5-8)

EXHIBIT to Petition in Court of Claims Case No.42403

SOUTHERN PACIFIC COMPANY

Statement of Freight Charges on Shipments routed and moved over Non-land-grant Mileage of SOUTHERN PACIFIC COMPANY via KLAMATH FALLS,Ore., showing Balances claimed account of unauthorized application by Government Accounting Officers of Land-grant Deductions.

I.C.C. Bill Number	Bill-of-Lading Number	Bill-of-Lading Date	From	To	Correct Freight Charges (*)	Amount Allowed	Balance Claimed	Reference to General Accounting Office Settlement Number	Reference to General Accounting Office Settlement Date
		1931							1932
8718	WQ221561	Nov. 13	Fort Lewis,Wash.	San Pedro,Calif.	1.28	1.09	0.19	T-80898	Apr.14
8719	WQ260576	Nov. 12	Portland,Ore.	SanFrancisco,Cal.	7.55	5.25	2.30	T-80893	Mar.24
	260577	"	"	"					
	260578	"	"	"					
8729	WQ366884	Nov. 20	SanFrancisco,Cal.	Clackamas,Ore.	13.69	9.48	4.21	T-80718	Mar.28
8731	WQ366890	Nov. 20	SanFrancisco,Cal.	Eugene,Ore.	1.54	1.02	0.52	T-80862	Apr.12
	WQ366834	Nov. 9	SanFrancisco,Cal.	Portland,Ore.	1.82	1.27	0.55	"	"
	366889	Nov. 20	"	"					
8732 pt	WQ366893	Nov. 20	SanFrancisco,Cal.	Portland,Ore.	0.82	0.57	0.25	T-80858	Apr. 8
8771	A-259114	Oct. 15	Pasco,Wash.	Los Angeles,Cal.	13.64	12.72	0.92	T-80968½	May 5
	259116	Nov. 12	"	"					
8785	A-20008	Nov. 16	Tillamook,Ore.	SanFrancisco,Cal.	3.53	2.98	0.55	T-81416½	June 1
8808 pt	VA486000	Nov. 20	San Francisco,Cal	Portland,Ore.	19.08	13.28	5.80	T-80960½	May 5
8806	VA-1289	Nov. 12	SanFrancisco,Cal.	Portland,Ore.	2.02	1.41	0.61	T-81310½	May 23
8842	I-152965	Nov. 13	East Portland,Ore	SanFrancisco,Cal.	4.05	2.81	1.24	T-80966½	May 5
8987	WQ268791	Nov. 12	Moscow,Ida.	Army Point,Cal.	1.19	0.84	0.35	T-80967	Apr.18
9000	WQ280586	Nov. 18	Vancouver,Wash.	SanFrancisco,Cal.	4.18	3.27	0.91	T-80968	Apr.20
	280587	Nov. 20	"	"					
9001	WQ299242	Nov. 24	Fort Lewis,Wash.	SanFrancisco,Cal.	4.87	3.33	1.54	T-80848	Apr.12
	WQ221576	Nov. 25	"	"					
9002 pt	WQ221574	Nov. 25	Fort Lewis,Wash.	Monterey,Calif.	49.31	42.56	6.75	T-80949	Apr.20
9003	WQ221565	Nov. 17	Fort Lewis,Wash	SanFrancisco,Cal.	4.44	3.55	0.89	T-80970	Apr.18
9004	WQ221563	Dec. 2	Fort Lewis,Wash.	Tuba City,Cal.	1.45	1.06	0.39	T-80864	Apr. 7
9005 pt	WQ221573	Nov. 25	Fort Lewis,Wash.	San Jose,Cal.	1.13	0.86	0.27	T-80845	Apr.12
	221585	Dec. 3	Fort Lewis,Wash.	Alameda,Cal.	1.12	0.84	0.28	"	"
9006	WQ330554	Oct. 2	Seattle,Wash.	SanFrancisco,Cal.	6.33	4.78	1.55	T-80866	Apr. 7
9007	WQ341264	Nov. 25	Seattle,Wash.	Army Point,Cal.	70.70	55.83	14.87	T-80807	Apr. 2
	234151	Dec. 4	"	"					
	361233	Nov. 13	"	"					
	234150	Dec. 4	"	"					
	234152	Dec. 7	"	"					
	304306	Dec. 4	Spokane,Wash.	Army Point,Cal.					
9008	WQ221566	Nov. 13	Fort Lewis,Wash.	Army Point,Cal.	237.89	183.98	53.91	T-80867	Apr.12
9009	WQ260593	Dec. 2	Eugene,Ore.	Army Point,Cal.	1.82	1.16	0.66	T-80868	Apr. 8
9010	WQ171799	Nov. 26	Fort Stevens,Ore.	SanFrancisco,Cal.	12.89	10.38	2.51	T-80721	Mar.28
9011	WQ260581	Nov. 27	E.Portland,Ore.	SanFrancisco,Cal.	97.51	68.22	29.29	T-80717	Mar.28
9024	WQ346603	Nov. 25	Army Point,Cal.	Corvallis,Ore.	171.74	113.58	58.16	T-80869	Apr.12
9029	WQ346504	Nov. 25	Army Point,Cal.	Corvallis,Ore.	5.57	3.74	1.83	T-80806	Apr. 2
	346584	Nov. 21	Army Point,Cal.	Clackamas,Ore.					
			Totals of Sheet A		741.87	550.87	191.00		

(*) Amounts shown in this column are after deducting any differences in charges accepted by Company.

(Sheet 3)-7

S.P.Co. Bill Number	Bill-of-Lading Number	Bill-of-Lading Date	From	To	Correct Freight Charges (*)	Amount Allowed	Balance Claimed	Reference to General Accounting Office Settlement Number	Reference to Settlement Date
		1931							1932
P-9026	WQ346636	Dec. 9	Army Point,Cal.	Corvallis,Ore.	1.05	0.88	0.17	T-80791	Apr. 1
9027	WQ367226	Dec. 8	SanFrancisco,Cal.	Corvallis,Ore.	18.36	12.74	5.62	T-80859	Apr. 8
	367227	Dec. 8	"	Portland,Ore.					
	367270	Dec. 12	"	"					
	367269	Dec. 12	"	"					
9028	WQ346958	Nov. 24	SanFrancisco,Cal.	Clackamas,Ore.	23.80	17.04	6.76	T-80792	Apr. 4
	367101	Nov. 24	"	"					
	367229	Dec. 8	"	"					
9187	I-186738	Nov. 11	SanFrancisco,Cal.	Chemawa,Ore.	33.75	24.94	8.81	T-82036½	July 26
	1889 14	Nov. 20	"	"					
9215	A-229118	Nov. 30	Pasco,Wash.	Los Angeles,Cal.	13.03	11.43	1.60	T-80964½	May 5
9216	A-130634	Nov. 10	Portland,Ore.	Los Angeles,Cal.	3.48	2.86	0.62	T-81152½	May 17
9334	WQ278517	Dec. 22	Vancouver,Wash.	Army Point,Cal.	9.08	6.74	2.34	T-80896	Apr.14
9336	WQ221594	Dec. 11	Fort Lewis,Wash.	SanFrancisco,Cal.	3.30	2.45	0.85	T-80897	Apr.13
9341	WQ278501	Dec. 5	Corvallis,Ore.	Army Point,Cal.	1.97	1.30	0.67	T-80972	Apr.18
9342	WQ260582	Nov. 28	E.Portland,Ore.	SanFrancisco,Cal.	133.41	93.11	40.30	T-8086	Apr. 8
	260587	Dec. 14	"	"					
9347	WQ346635	Dec. 9	Army Point,Cal.	Oregon City,Ore.	32.88	22.16	10.72	T-80984	Apr.18
	346670	Dec. 18	Army Point,Cal.	Clackamas,Ore.					
9348	WQ346867	Dec. 18	Army Point,Cal.	Eugene,Ore.	1.40	0.84	0.56	T-80973	Apr.18
9349-pt	WQ367487	Dec. 18	SanFrancisco,Cal.	Amity,Ore.	1.49	1.10	0.39	T-81081	Apr.22
	367482	Dec. 18	SanFrancisco,Cal.	North Bend,Ore.	2.32	1.66	0.66		
	367489	Dec. 18	SanFrancisco,Cal.	Hubbard,Ore.	1.49	1.02	0.47		
	367473	Dec. 18	SanFrancisco,Cal.	McMinnville,Ore.	1.43	1.13	0.30		
	367469	Dec. 18	SanFrancisco,Cal.	Willamina,Ore.	1.64	1.23	0.41		
	367490	Dec. 19	SanFrancisco,Cal.	Sheridan,Ore.	1.58	1.18	0.40		
	367478	Dec. 18	SanFrancisco,Cal.	Marshfield,Ore.	2.32	1.67	0.65		
	367472	Dec. 18	SanFrancisco,Cal.	Salem,Ore.	3.06	2.09	0.97		
	367471	Dec. 18	SanFrancisco,Cal.	Salem,Ore.					
	367479	Dec. 18	SanFrancisco,Cal.	Woodburn,Ore.	4.56	3.13	1.43		
	367480	Dec. 18	SanFrancisco,Cal.	Woodburn,Ore.					
	367481	Dec. 18	SanFrancisco,Cal.	Woodburn,Ore.					
	367470	Dec. 18	SanFrancisco,Cal.	Eugene,Ore.	3.90	2.57	1.33		
	367484	Dec. 18	SanFrancisco,Cal.	"					
	367482	Dec. 18	SanFrancisco,Cal.	Portland,Ore.	11.65	8.11	3.54		
	367483	Dec. 18	"	"					
	367468	Dec. 18	SanFrancisco,Cal.	Cottage Grove,Ore	1.68	1.36	0.32		
	367460	Dec. 18	SanFrancisco,Cal.	Gervais,Ore.	1.52	1.04	0.48		
9417	VA-1290	Nov. 12	SanFrancisco,Cal.	Portland,Ore.	0.82	0.57	0.25	T-81310½	May 23
9418	VB486036	Dec. 8	SanFrancisco,Cal.	Portland,Ore.	0.84	0.58	0.26	T-81310½	May 23
9484	E-810242	Dec. 10	Portland,Ore.	Napa Junction,Cal.	2.93	2.05	0.88	T-81432	June 7
9487	E-824552	Dec. 10	Bremerton,Wash.	San Pedro,Cal.	3.73	3.37	0.36	T-81462½	June 8
	E-824570	Dec. 15	"	"					
9591	A-130643	Dec. 9	Los Angeles,Cal.	Portland,Ore.	5.85	4.82	1.03	T-80970½	May 5
9595	A-172833	Nov. 16	Orofino,Ida.	San Leandro,Cal.	5.84	5.09	0.75	T-81302½	May 23
9600	A-168571	Dec. 11	Portland,Ore.	Fresno,Cal.	16.54	12.91	3.63	PreAudit letter March 8,1932 (T-FIN-Sch.3-583)	
9601 pt	A-155823	Nov. 6	SanFrancisco,Cal.	Detroit,Ore.	3.93	2.77	1.16	T-80958½	May 5
9691	VB-81382	Dec. 15	Seattle,Wash.	Stockton,Cal.	1.09	0.83	0.22	T-80891	Apr.12
9726	E-824704	Dec. 23	Bremerton,Wash.	San Pedro,Cal.	74.48	66.11	8.37	T-81250½	May 20
	824729	Dec. 24	"	"					
			Totals of Sheet 3		430.16	322.88	107.28		

(*)Amounts shown in this column are after adjusting any differences in charges accepted by Company.

S.P.Co. Bill Number	Bill-of-Lading Number	Bill-of-Lading Date	From	To	Correct Freight Charges (*)	Amount Allowed	Balance Claimed	Reference to General Accounting Off ce Settlement Number	Reference to General Accounting Off ce Settlement Date
		1931							1932
9756	I-197224	Dec. 21	E.Portland,Ore.	SanFrancisco,Cal.	7.29	5.06	2.23	T-82022½	July 25
9757	I-197218	Dec. 21	E.Portland,Ore.	Stewart,Nev.	199.95	146.29	53.66	T-82024½	July 26
9758	I-197220	Dec. 21	E.Portland,Ore.	San Carlos,Ariz.	18.10	16.22	1.88	T-82048½	July 29
9832	WC321570	Dec. 21	Clackamas,Ore.	SanFrancisco,Cal.	2.16	1.49	0.67	T-80861	Apr. 3
9834	WC278505	Dec. 18	E.Portland,Ore.	SanFrancisco,Cal.	223.99	155.52	68.47	T-80902	Apr.14
	278511	Dec. 21	"	"					
9839	WC367483	Dec. 18	San Francisco,Cal	McMinnville,Ore.	2.92	2.15	0.77	T-81062	Apr.20
	367459	Dec. 18	SanFrancisco,Cal.	Hubbard,Ore.					
9853	A-130638	Dec. 21	Portland,Ore.	Los Angeles,Cal.	3.17	2.61	0.56	T-81150½	May 20
9854	A-259120	Dec. 23	Pasco,Wash.	Los Angeles,Cal.	6.38	4.77	1.61	T-81304½	May 23
9860	A-130629	Dec. 26	Los Angeles,Cal.	Salem,Ore.	1.29	1.05	0.24	T-80962½	May 5
9874	B-835834	Dec. 24	Butte,Mont.	SanFrancisco,Cal.	2615.40	2299.80	315.60	T-81952½	July 5
	835832	Dec. 24	"	"					
	835838	Dec. 24	"	"					
		1932							
9909	WC364282	Jan. 8	Fort Lewis,Wash.	SanFrancisco,Cal.	36.41	29.26	7.06	T-80981	Apr.18
	364287	1931 Dec. 30	"	"					
		1932							
9910	WC234158	Jan. 7	Seattle,Wash.	SanFrancisco,Cal.	1.40	1.06	0.34	T-80982	Apr.18
9913	WC368734	Jan. 16	Army Point,Cal.	Corvallis,Ore.	8.86	5.87	2.99	T-80974	Apr.18
	368739	Jan. 16	"	"					
9916	WC367671	Jan. 12	SanFrancisco,Cal.	Canby,Ore.	2.87	2.43	0.44	T-81058	Apr.20
	367711	Jan. 12	SanFrancisco,Cal.	Grants Pass,Ore.					
9917	WC367847	Jan. 20	SanFrancisco,Cal.	Corvallis,Ore.	4.16	2.83	1.33	T-80975	Apr.19
9924	WC367700	Jan. 12	SanFrancisco,Cal.	McMinnville,Ore.	1.28	1.00	0.28	T-81045	Apr.20
	367706	Jan. 12	"	"	1.48	1.15	0.33		
	367704	Jan. 12	SanFrancisco,Cal.	Salem,Ore.	2.93	2.00	0.93		
	367703	Jan. 12	"	"					
	367686	Jan. 12	SanFrancisco,Cal.	Hillsboro,Ore.	1.33	1.03	0.30		
9925	WC367834	Jan. 13	SanFrancisco,Cal.	Salem,Ore.	1.27	0.87	0.40	T-80983	Apr.20
	367826	Jan. 13	"	Clackamas,Ore.	87.72	60.75	26.97		
	367825	Jan. 13	" "	Corvallis,Ore.	3.17	2.16	1.01		
		1931							
10018	WC332281	Dec. 19	E.Portland,Ore.	SanFrancisco,Cal.	43.89	30.32	13.27	T-80999	Apr.20
10027	WC278507	Dec. 19	Portland,Ore.	Monterey,Cal.	15.46	12.69	2.77	T-80999	Apr.20
10029	WC332279	Dec. 19	Portland,Ore.	Aviation Field, Cal.	29.71	21.53	8.18	T-80999	Apr.20
10034	WC278528	Jan. 12	Vancouver,Wash.	Army Point,Cal.	1.21	0.88	0.33	T-80999	Apr.20
10035	WC361395	Jan. 15	Seattle,Wash.	San Pedro,Cal.	8.37	4.64	0.73	T-81080	Apr.20
10036	WC364254	1931 Dec. 22	Fort Lewis,Wash.	SanFrancisco,Cal.	6.09	4.87	1.22	T-81081	Apr.20
10037	WC364265	1932 Jan. 11	Fort Lewis,Wash.	Monterey,Cal.	17.66	15.20	2.46	T-81107	Apr.25
	221599	1931 Dec. 15	"	"					
10038	WC331018	1931 Oct. 27	Seattle,Wash.	SanFrancisco,Cal.	1.14	0.86	0.28	T-81032	Apr.19
10042	WC344755	1932 Jan. 23	Army Point,Cal.	Corvallis,Ore.	4.09	2.71	1.38	T-81107	Apr.25
10043	WC367617	Jan. 5	SanFrancisco,Cal.	Portland,Ore.	1.66	1.16	0.50	T-81033	Apr.19
10044	WC367828	Jan. 13	SanFrancisco,Cal.	Portland,Ore.	1.12	0.77	0.35	T-81027	Apr.19
10045	WC367618	Jan. 5	SanFrancisco,Cal.	Clackamas,Ore.	2.18	1.51	0.67	T-81028	Apr.20
			Totals of Sheet C		3342.82	2842.51	500.71		

(*) Amounts shown in this column are after deducting any differences in charges accepted by Company.

S.P.Co. Bill Number	Bill-of-Lading Number	Bill-of-Lading Date	From	To	Correct Freight Charges (*)	Amount Allowed	Balance Claimed	Reference to Land Accounting Office Settlement Number	Reference to Land Accounting Office Settlement Date
		1932							1932
10046pt	WQ367792	Jan. 12	SanFrancisco,Cal.	Portland,Ore.	27.17	18.88	8.29	T-81110	Apr.27
	367716	Jan. 12	"	"					
	367715	Jan. 12	"	"					
	367714	Jan. 12	"	"					
	WQ367705	Jan. 12	SanFrancisco,Cal.	Eugene,Ore.	1.74	1.31	0.43		
	WQ367688	Jan. 12	SanFrancisco,Cal.	Wheeler,Ore.	1.92	1.67	0.25		
	WQ367877	Jan. 20	SanFrancisco,Cal.	Monroe,Ore.	1.82	1.27	0.55		
		1931							
10167	I-146208	Dec. 21	Swank,Wash.	Berkeley,Cal.	100.03	81.85	18.18	T-81488½	June 13
		1932							
10310	T-111748	Jan. 16	Army Point,Cal.	North Bend,Ore.	6.50	5.14	1.36	T-81511	June 10
10311	T-130046	Jan. 16	SanFrancisco,Cal.	Gardiner,Ore.	1.94	1.36	0.58	T-81418½	June 1
10312	T-130045	Jan. 16	SanFrancisco,Cal.	Toledo,Ore.	1.93	1.48	0.45	T-81412½	June 1
10349	C-42376	Jan. 20	Portland,Ore.	SanFrancisco,Cal.	58.57	40.77	17.80	T-81476½	June 8
10350	C-42375	Jan. 4	SanFrancisco,Cal.	Portland,Ore.	60.86	42.36	18.50	T-81976½	July 6
10516	WQ304329	Jan. 22	Moscow,Ida.	Army Point,Cal.	1.60	0.84	0.76	T-81111	Apr.25
10523	WQ278533	Jan. 25	Vancouver,Wash.	Army Point,Cal.	1.21	0.82	0.39	T-81111	Apr.25
10534	WQ367600	Jan. 22	Tacoma,Wash.	SanFrancisco,Cal.	132.06	98.71	33.35	T-81111	Apr.25
10525	WQ364274	Jan. 27	Fort Lewis,Wash.	SanFrancisco,Cal.	3.33	2.47	0.86	T-81111	Apr.25
10533	WQ367991	Jan. 28	SanFrancisco,Cal.	Clackamas,Ore.	100.02	69.27	30.75	T-81110	Apr.27
10534	WQ367972	Jan. 30	SanFrancisco,Cal.	Portland,Ore.	2.82	1.96	0.86	T-81110	Apr.27
	368055	Feb. 6	"	"					
10574	A-161034	Dec. 9	SanFrancisco,Cal.	Portland,Ore.	2.01	1.39	0.62	T-81414½	June 1
10787	A- 24253	Feb. 11	SanFrancisco,Cal.	Portland,Ore.	0.82	0.57	0.25	T-81470½	June 8
11183	A- 24245	Feb. 17	SanFrancisco,Cal	Portland,Ore.	1.78	1.53	0.25	T-81468½	June 8
	162853	Mar. 5	Emeryville,Cal.	Grants Pass, Ore.					
			Totals of Sheet D		508.13	373.65	134.48		

(*) Amounts shown in this Column are after deducting any differences in charges accepted by Company.

RECAPITULATION.

	Correct Freight Charges	Amount Allowed	Balance Claimed
Sheet A. . . .	$ 741.57	$ 550.57	$ 191.00
Sheet B. . . .	430.16	322.88	107.28
Sheet C. . . .	3,242.82	2,842.61	500.21
Sheet D. . . .	508.13	373.65	134.48
Grand Total .	$5,022.68	$4,089.71	$ 932.97

[fol. 9] II. General Traverse—Filed May 11, 1933

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

W. W. Scott, Acting Head, Court of Claims Division.

III. Substitution of Attorney of Record

The petition in this case was filed by Mr. Charles H. Bates, as attorney of record.

On May 8, 1934, Mr. Bates withdrew his appearance as attorney in the case.

On May 21, 1934, James R. Bell, Esq., filed a power of attorney and was entered as attorney of record.

IV. Argument and Submission of Case

On March 9, 1938, this case was argued and submitted on merits by Mr. James R. Bell, for plaintiff, and by Mr. Louis R. Mehlinger, for defendant.

[fol. 10] V. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Williams, J.—Filed June 6, 1938**

Mr. James R. Bell for the plaintiff. Mr. Louis R. Mehlinger, with whom was Mr. Assistant Attorney General Sam E. Whitaker, for the defendant.

The court, upon the report of a commissioner and the evidence, makes the following

Special Findings of Fact

1. Plaintiff is a corporation duly organized under the laws of the State of Kentucky, and as such corporation now is, and was during all the times hereinafter mentioned, engaged as a common carrier by railroad in the transporta-

tion of passengers and property to, through, and between various States of the United States, including the States of California and Oregon.

2. During December, 1931 and January 1932, plaintiff transported certain property of the United States, on Government bills of lading, for the Quartermaster Corps, United States Army, War Department, and for the Department of Commerce, Bureau of Lighthouses, described as follows:

(a) 2 carloads of bran from East Portland, Oregon, to San Francisco, California, on Government bills of lading WQ 278505, dated December 18, 1931, and WQ 278511, dated December 21, 1931, Southern Pacific Company Bill No. F 9824.

[fol. 11] (b) 2 crates of derrick booms, with winches and attachment parts and counter weights, from East Portland, Oregon, to San Francisco, California, on Government bill of lading WQ 332281, dated December 19, 1931, Southern Pacific Company Bill No. F 10026.

(c) 26 cylinders gas, H. P., pinch, steel (or iron), not plated, over 25 pounds pressure, under red label, from Portland, Oregon, to San Francisco, California, on Government bill of lading C 42376, dated January 20, 1932, Southern Pacific Company Bill No. F 10349.

(d) 26 cylinders gas, H. P., pinch, steel (or iron), not plated, 25 pounds or less pressure, under white label (empty) from San Francisco, California, to Portland, Oregon, on Government bill of lading C 42375, dated January 4, 1932, Southern Pacific Company Bill No. F 10350.

3. The five shipments referred to in finding 2 were selected by plaintiff as typical of all the shipments set out in its petition and plaintiff claims that they suffice to cover the entire matter at issue between plaintiff and defendant and were selected by plaintiff for this purpose in order to shorten the presentation to the Court.

4. The 5 shipments described in paragraphs (a), (b), (c), and (d) of finding 2 were unrouted by the shipper representatives of defendant as to any particular line of railroad or route of the plaintiff between East Portland or Portland, Oregon, and San Francisco, California, the points of origin and destination of such shipments.

5. Plaintiff, during the period of the shipments involved in this case, operated and now operates two lines or routes of railroad between Oregon and California points, including Portland and East Portland, Oregon, and San Francisco, California, in part owned by it and in part leased by it from its subsidiary, Central Pacific Railway Company, owner, both of which lines or routes were and are maintained and operated by plaintiff for freight, passenger and all classes of traffic.

Both of these routes or lines of railroad, maintained and operated by plaintiff, are shown on the map, plaintiff's exhibit 23, which is made a part hereof by reference.

[fol. 12] Cascade Route

6. (a) One of such routes or lines of railroad, for purpose of ready reference called of record the Cascade Route, between Portland, Oregon, and San Francisco, California, is shown on plaintiff's exhibit 23 by a combination red and blue line between Portland, Oregon, and Springfield Junction, Oregon, by a solid blue line between Springfield Junction, Oregon, and Black Butte, California, by a combination red and blue line between Black Butte, California, and Tehama, California, by a solid blue line between Tehama, California, and San Francisco, California, and may be described as beginning at Portland, Oregon, thence southerly, a distance of 126.84 miles, to Springfield Junction, Oregon, thence from Springfield Junction, Oregon, via Oakridge, Cascade Summit, Paunina, Kirk, and Klamath Falls, Oregon, to Black Butte, California, a distance of 275.60 miles, thence from Black Butte, California, to Tehama, California, a distance of 131.99 miles, thence from Tehama, California, via Willows, Cortena, Harrington, and Woodland, California, to Davis, California, a distance of 110.70 miles, thence from Davis, California, via Suisun and Martinez, California,

to San Francisco, California, a distance of 79.90 miles. The total distance via this route between Portland, Oregon, and San Francisco, California, is 725.03 miles and between East Portland, Oregon, and San Francisco, California, 724.33 miles, there being .7 of a mile between Portland and East Portland, Oregon.

(b) Under Acts of Congress lands were granted in aid of construction of 258.13 miles of this line or route of rail-

road, described and referred to above as the Cascade Route, being 126.14 miles between East Portland, Oregon, and Springfield Junction, Oregon, and 131.99 miles between Black Butte, California, and Tehama, California. The other parts of this route or line of railroad, including the Cascade Line between Springfield Junction, Oregon, and Black Butte, California, via Oakridge, Cascade Summit, Paunina, Kirk and Klamath Falls, Oregon, were not constructed with the aid of land grants and are not land grant lines. For this land grant mileage, 258.13 miles, on these sections of [fol. 13] this line or route, plaintiff is and was obligated to transport property or troops of the United States for compensation 50 per centum of the charges to the public at large or private parties, based on the lawfully published and effective tariff rates applicable via this route for like transportation service.

(c) The land grant deduction proportion of charges to the public at large or private parties, based on lawfully published and effective tariff rates for transportation service via this Cascade Route, described hereinbefore, between Portland, Oregon, and San Francisco, California, was and is 17.801 per cent and such land grant deduction proportion of such charges based on such tariff rates applicable via this route between East Portland, Oregon, and San Francisco, California, was and is 17.819 per cent.

Siskiyou Route

7. (a) The other route or line of railroad maintained and operated by plaintiff between Portland and East Portland, Oregon, and San Francisco, California, referred to of record for purpose of ready reference as the Siskiyou Route, is shown on plaintiff's exhibit 23 by the combination red and blue line between Portland, Oregon, and Springfield Junction, Oregon, by the solid red line between Springfield Junction, Oregon, and Black Butte, California, by the combination red and blue line between Black Butte and Tehama, California, by the solid red line between Tehama and Roseville, California, by the uncolored line between Roseville and Davis, California, and by the solid blue line between Davis and San Francisco, California. This route or line of railroad may be described as beginning at Portland, Oregon, thence southerly, a distance of 126.84 miles, to Springfield Junction, Oregon, thence from Springfield Junc-

tion, Oregon, via Drain, Roseburg, Grants Pass, Ashland, and Siskiyou, Oregon, to Black Butte, California, a distance of 300.42 miles, thence from Black Butte to Tehama, California, a distance of 131.99 miles, thence from Tehama to Roseville, California, a distance of 104.61 miles, thence from Roseville westerly to Davis, California, a distance of 31.10 miles, thence from Davis, California, via Suisun and Martinez, California, to San Francisco, California, a dis-[fol. 14] tance of 79.90 miles. Total distance between Portland, Oregon, and San Francisco, California, via this route is 774.86 miles and between East Portland, Oregon, and San Francisco, California, 774.16 miles.

(b) Under Acts of Congress lands were granted in aid of construction of 663.16 miles of this route or line of railroad, being 126.14 miles between East Portland, Oregon, and Springfield Junction, Oregon, 300.42 miles between Springfield Junction, Oregon, and Black Butte, California, via Drain, Roseburg, Grants Pass, Ashland, and Siskiyou, Oregon, 131.99 miles between Black Butte and Tehama, California, and 104.61 miles between Tehama and Roseville, California. Other parts of this route between East Portland and Portland, Oregon, and between Roseville, California, and San Francisco, California, were constructed without the aid of land grants and are not land grant lines. These land grant sections constitute the line of railroad via the Siskiyou Route between East Portland, Oregon, and Roseville, California. For this land grant mileage, 663.16 miles, on this line between East Portland, Oregon, via the Siskiyou Route and Roseville, California, plaintiff is and was obligated to transport property and troops of the United States for compensation 50 per centum of the charges to the public at large or private parties, based on the lawfully published and effective tariff rates applicable via this route for like transportation service.

(c) the land grant deduction proportion of charges to the public at large or private parties, based on lawfully published and effective tariff rates for transportation service via this Siskiyou Route, described hereinbefore, between Portland, Oregon, and San Francisco, California, was and is 42.792 percent and such land grant deduction of such charges based on such tariff rates applicable via this route between East Portland, Oregon, and San Francisco, California, was and is 42.831 percent.

8. (a) As shown on plaintiff's exhibit 23 there is in addition to the two routes hereinbefore described as the Cascade Route and the Siskiyou Route, a route of plaintiff between Portland, Oregon, and San Francisco, California, shown on this exhibit in combination red and blue between, Portland, [fol. 15] Oregon, and Springfield Junction, Oregon, a distance of 126.14 miles, in solid blue between Springfield Junction, Oregon, and Black Butte, California, a distance of 275.60 miles, in combination red and blue between Black Butte, California, and Tehama, California, a distance of 131.99 miles, in solid red between Tehama, California, and Roseville, California, a distance of 104.61 miles, uncolored between Roseville, California, and Davis, California, a distance of 31.10 miles, and in solid blue from Davis, California, to San Francisco, California, a distance of 79.90 miles. The total distance via this route between Portland, Oregon, and San Francisco, California, is 750.04 miles and between East Portland, Oregon, and San Francisco, California, 749.34 miles. Of these mileages, 362.74 miles are 50 percent land grant lines as heretofore described.

(b) The land grant precentage proportions of mileage of these lines of railroad described in this finding are 24.182 percent between San Francisco, California, and Portland, Oregon, and 24.204 percent between San Francisco, California, and East Portland, Oregon. These lines of railroad via this route are a combination of parts of the routes described as the Cascade Route and the Siskiyou Route between Portland, Oregon, and San Francisco, California, in findings 6 and 7.

9. Plaintiff also operated and operates and had and has rates applicable via another route consisting of that part of the Siskiyou Route described in finding 7 between Portland, Oregon, and Tehama, California, shown on plaintiff's exhibit 23 in combination red and blue between Portland, Oregon, and Springfield Junction, Oregon, in solid red between Springfield Junction, Oregon, and Black Butte, California, and in combination red and blue between Black Butte, California, and Tehama, California, and that part of the Cascade Route described in finding 6, shown on plaintiff's exhibit 23 in solid blue, between Tehama, California, and San Francisco, California.

10. For the reasons hereinafter set forth, plaintiff's lawfully published and effective tariff rates charged the pub-

lic at large or private parties, on the particular shipments of the property described in finding 2 between East Port-
[fol. 16] land, Oregon, and San Francisco, California, and Portland, Oregon, and San Francisco, California, applicable a the Cascade Route described in finding 6, were lower between these points or terminals than plaintiff's lawfully published and effective tariff rates charged the public at large or private parties for like transportation service, applicable via the Siskiyou Route described in finding 7.

Such tariff rates applicable via the Cascade Route were restricted to such route by provisions contained in the tariffs and did not apply via any other route between Portland or East Portland, Oregon, and San Francisco, California, this being the route described in finding 6, for convenience called the Cascade Route, except that the rates are applicable via any other route where such other route is utilized for the movement of shipments by plaintiff as indicated on page 517 of tariff rates filed with the Interstate Commerce Commission, which is plaintiff's exhibit 1 and made a part hereof by reference.

11. Charges to the public at large or private parties based on the lawfully published and effective tariff rates on the shipments described in finding 2, restricted to and applicable only via the Cascade Route between Portland or East Portland, Oregon, and San Francisco, California, described in finding 6, less the land grant deduction proportions of 17.801 per cent and 17.819 per cent respectively, applicable via such route as set out in paragraph (c) of finding 6, made lower net charges to the defendant on the shipments of the particular property between such terminals, involved in this case, than the charges to the public at large or private parties, based on lawfully published and effective tariff rates applicable via the route between Portland or East Portland, Oregon, and San Francisco, California, described in finding 7, called for ready reference the Siskiyou Route, less the land grand deduction proportions of 42.792 per cent and 42.831 per cent respectively, applicable via such route, as set out in paragraph (c) of finding 7.

Such net charges to the Government, applicable via the Cascade Route, were the lowest via any route of plaintiff between Portland or East Portland, Oregon, and San Francisco, California.

[fol. 17] 12. (a) Plaintiff assessed charges for the transportation service, described in finding 2, based on the lowest lawfully published and effective tariff rates, for the transportation of such shipments, restricted to and applicable only via the Cascade Route, less the land grant deduction proportion of 17.801 per cent for transportation between Portland, Oregon, and San Francisco, California, and 17.819 per cent for transportation between East Portland, Oregon, and San Francisco, California, resulting in the lowest net charges to the Government via any route of plaintiff between Portland or East Portland, Oregon, and San Francisco, California, referred to in finding 11. Plaintiff's Bills Nos. F 9824, F 10026, F 10349, and F 10350 were rendered to defendant on the basis of such lowest net charges for this transportation service between Portland or East Portland, Oregon, and San Francisco, California.

(b) The defendant, through its General Accounting Office, Comptroller General of the United States, made payments to the plaintiff for this transportation service described in finding 2, on the basis of deducting from the total charges computed by applying the lawfully published and effective tariff rates for like transportation service to the public at large or private parties, which rates were restricted to and applicable only via the Cascade Route described in finding 6, between Portland or East Portland, Oregon, and San Francisco, California, the land grant deduction proportions of 42.792 per cent and 42.831 per cent respectively, applicable to tariff charges to the public at large or private parties for transportation service between such points or terminals via the Siskiyou Route described in finding 7, via which route such low tariff rates did not apply, as set out in finding 10.

(c) Plaintiff duly protested to the General Accounting Office of defendant each of such payments or settlements as inadequate.

13. (a) The part of the line of the railroad of plaintiff described as the Siskiyou Route in finding 7, between Roseville, California, and East Portland, Oregon, was constructed in two sections. One section was constructed from the vicinity of Roseville, California, to the California-Ore-[fol. 18] gon State line under a land grant act providing for the construction of a line of railroad through the Sacra-

mento Valley and Shasta Valley in California. This part of the line was completed in 1887. The other section of the line was constructed from East Portland, Oregon, to the Oregon California State line under a land grant act providing for a line of railroad from East Portland, Oregon, to the Oregon-California State line passing through the Willamette Valley, the Umqua Valley, and the Rogue River Valley in Oregon. This part of the line was completed in 1887 and the two sections of the line completely connected in December 1887.

(b) The section of the line of railroad between Roseville, California, and Sacramento, California, was constructed in 1869. The line of railroad between Sacramento and San Francisco, California, via Davis, Suisun, and Oakland, California, was connected up in 1870.

14. (a) The parts of the line of railroad or route of plaintiff described in finding 6 as the Cascade Route, between East Portland and Springfield Junction, Oregon, and between Black Butte, California, and Tehama, California, are parts of the line of railroad described in finding 13.

(b) The line of railroad between San Francisco, California, and Davis, California, via Fairfield and Suisun, California, was completed in 1870.

(c) The line of railroad from Davis, California, via Woodland, Harrington, Cortena, and Willows, California, to Tehama, California, was completed in 1882.

(d) The history of and reasons for the construction of that part of plaintiff's line of railroad, called for convenience the Cascade Route, between Black Butte, California, and Springfield Junction, Oregon, via Klamath Falls, Kirk, Paunina, Cascade Summit, and Oakridge, Oregon, shown on plaintiff's exhibit 23 by a solid blue line, are:

In 1905, plaintiff acquired a logging road, extending from Weed, California, just north of Black Butte, California, to Grass Lake, California. This logging road was reconstructed for operation and for the purpose of reaching the timber extended to Bray, California, in 1907; to Ady, Oregon, in 1908; to Klamath Falls, Oregon, in 1909; to Chilo- [fol. 19] quin, Oregon, in 1911; and to Kirk, Oregon, in 1912, serving forest and agricultural areas on that line, the timber areas extending substantially from Grass Lake, Cali-

fornia, to Kirk, Oregon, and the principal agricultural areas being in the vicinity of Klamath Falls, Oregon, in the Klamath basin.

About the time of the commencement of construction of the above-mentioned line of railroad north from Grass Lake, California, to Bray, California, plaintiff constructed a line of railroad from Springfield Junction, Oregon, to Springfield, Oregon. A line of railroad had previously been constructed, a part of which was between Springfield, Oregon, and Natron, Oregon, completed to Natron, Oregon, in 1891. Thereafter this Cascade line, shown in solid blue on plaintiff's exhibit 23, was projected to serve timber areas on either side of the Cascade Mountains, the line from Natron, Oregon, southeasterly to Oakridge, Oregon, being completed in 1912. This line of railroad was projected also for the ultimate object of crossing the Cascade Mountains and forming a connection with the main line of the Central Pacific Railway in Nevada or with the lines of the Union Pacific Railroad in eastern Oregon, both plaintiff Southern Pacific Company and the Union Pacific system then being under one control. It was also projected with the ultimate object of connecting up with the line hereinbefore described as being completed to Kirk, Oregon, in 1912.

In 1911, 1912, 1913, and 1914, plaintiff constructed a line of railroad from Fernley, Nevada, a point on its subsidiary, Central Pacific Railway, to Westwood, California, shown in black or uncolored line on plaintiff's exhibit 23, serving a large timber area and sawmill interest at Westwood and Susanville, California. Plaintiff also projected a line of railroad, known as the Modoc Northern Railroad, from Klamath Falls, Oregon, to connect up with the line from Fernley, Nevada, to Westwood, California, which line passed through the heart of the Klamath Falls agricultural area and a large timber area between that basin and Westwood Junction, California.

Plaintiff, by acquisitions and construction, completed the line of railroad between Fernley, Nevada, and Klamath Falls, Oregon, connecting there with the Cascade Route, in [fol. 20] 1929, this line of railroad being shown on plaintiff's exhibit 23 in black or uncolored line.

The construction of the lines of railroad from Springfield Junction, Oregon, was stopped at Oakridge, Oregon, and from Black Butte, California, was stopped at Kirk, Oregon, and from Fernley, Nevada, was stopped at West-

wood Junction, California, because of suits brought attacking control of plaintiff Southern Pacific Company by the Union Pacific and control of the Central Pacific Railway by plaintiff Southern Pacific Company. No further construction of these lines was undertaken until these suits were disposed of and the Interstate Commerce Commission in 1923 approved the leasing of the Central Pacific Railway by the plaintiff. Immediately thereafter construction was resumed on the Cascade line between Oakridge and Kirk, Oregon, and this line of railroad connected up September 1, 1926. This completed the construction of this part of the Cascade Route between Black Butte, California, and Springfield Junction, Oregon, via Klamath Falls, Pannina, Cascade Summit, and Oakridge, Oregon.

The lines of railroad described in this finding opened up a large area producing a substantial tonnage of forest and agricultural products and other commodities, afforded a 237 mile shorter transcontinental route between northern California and Oregon and transcontinental eastern destinations and a slightly shorter and less costly operated line between California and Oregon.

The primary purpose for the construction of a portion of the Cascade Route or non-land-grant line, from Oakridge, Oregon, to Kirk, Oregon, a distance of 118 miles, commonly called the Natron Cut-off, owned by the Central Pacific Railroad, was the development of local traffic, which was almost wholly dependent on the exploitation of timber resources, and the completion of an alternate line between Weed and Springfield Junction over which traffic could be handled more economically than by the existing line, the Siskiyou Route or land-grant line, and moving substantially all freight between Weed and Springfield Junction.

15. Since the completion of the construction of the lines of railroad described in finding 14, plaintiff has had and [fol. 21] now has two complete lines of railroad or routes in Oregon and northern California, one the Siskiyou route, described in finding 7, serving the valleys and areas described in finding 13, producing much tonnage of timber, agricultural products, livestock, etc., and the other the Cascade route, described in finding 6, also serving large timber areas and agricultural and livestock producing areas, each of these lines of railroad serving producing areas quite generally at all points. Plaintiff has maintained the Sis-

kiyou route, transporting a substantial and varied traffic and serving a large and important area. The Siskiyou route and the Cascade route are two separate and distinct routes or lines of railroad, necessary for adequate transportation service to the interested areas or territories traversed by such lines.

On through shipments moving between San Francisco and Portland plaintiff had issued instructions to route such shipments from Eugene via Klamath Falls to Black Butte over the portion of plaintiff's line called the Cascade Route or non-land-grant line, principally for economical reasons. In certain seasons of the year special conditions made it more desirable to move shipments, such as bananas and livestock, over the Siskiyou Route or land-grant line between Black Butte and Eugene, notwithstanding the general rule to route all traffic over the Cascade Route or non-land-grant line. In certain other instances, traffic was moved over the Siskiyou Route north for a considerable distance into Eugene and thence south over the Cascade Route rather than continue it south from intermediate points. In other instances, where there were two trains leaving Eugene going south, shipments would be diverted from one train to another to fill out the train on the other route rather than run an extra train over the other route.

The instructions to route all traffic over the Cascade Route upon the conditions hereinbefore stated resulted in diverting from the Siskiyou Route 1,275,000 tons of traffic a year southbound, consisting chiefly of forest products, and 250,000 tons a year, northbound, consisting mainly of groceries and vegetables.

Plaintiff's scheduled train service between Black Butte and Eugene via the Cascade Route included two manifest or through freight trains southbound and one northbound [fol. 22] in addition to local train service. Between Black Butte and Springfield via the Siskiyou Route there was only one local freight train each way. Passenger train service included three trains each way over the Cascade Route and only one train each way over the Siskiyou Route.

16. Upon the completion of the Siskiyou route in 1887, plaintiff established through rates between Oregon and California points and sought traffic between Portland, Oregon, and points north and California destinations, including San Francisco, that had theretofore been transported

by coastwise ships between Oregon and California ports. Plaintiff, in order to share in the traffic, was compelled to make very low rates between Portland, Oregon, and San Francisco, California, and other points on San Francisco Bay, charging at the same time higher rates from, to, and between intermediate points on this line of railroad. This continued until 1910 when, because of an amendment to the Fourth Section of the Interstate Commerce Act, which made this unlawful without authority of the Interstate Commerce Commission, plaintiff was required to apply to and secure authority from the Interstate Commerce Commission to charge more for the transportation of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance. Plaintiff made applications to the Interstate Commerce Commission for such authority and in 1912 in Long and Short Haul Docket 1243, 22 I. C. C. 366, the Interstate Commerce Commission granted plaintiff authority to continue lower rates between Portland, Oregon, and San Francisco, California, and found in its report that the San Francisco-Portland rates were forced by water competition and were lower than normal, fair and reasonable rates. Under subsequent decisions of the Commission and under plaintiff's applications filed in 1910 and not decided by the Commission, plaintiff continued the application of the lower port or terminal rates over the Siskiyou route between Portland, Oregon, and San Francisco, California.

In 1920 the Fourth Section of the Interstate Commerce Act was again amended by Act of Congress, in which it [fol. 23] was required that these lower rates between the ports or terminals could not be established or maintained unless shown to the Interstate Commerce Commission to be reasonably compensatory, and in connection with which it was necessary to show that the higher rates at intermediate points were reasonable rates. Following this 1920 amendment to the Fourth Section of the Interstate Commerce Act, the Interstate Commerce Commission reopened all previous Fourth Section authorities which has been granted plaintiff on this Siskiyou line to meet water competition and set these cases for hearing, together with all applications involving water competition that had not theretofore been heard and disposed of. Hearings were had in

1922 but the case was not decided by the Interstate Commerce Commission until 1927, 129 I. C. C. 3, in which the Interstate Commerce Commission found that the port-to-port rates were lower than reasonable maximum rates and were compelled by water competition and granted plaintiff authority to maintain certain rates between the ports lower than intermediate rates on conditions prescribed.

In the meantime, the Cascade route, described in finding 6, had been completed, September 1, 1926, and operation commenced.

The lower rates between the ports, including Portland, Oregon, and San Francisco, California, which the commission prescribed or permitted as reasonably compensatory in the above-mentioned decision in 1927, were so much higher than the rates of the competing water lines that plaintiff could not share in the business.

Plaintiff's presentation to the Interstate Commerce Commission on the record in this case made in 1922 was based on the cost of operation over the land grant line via Ashland, Oregon, on the Siskiyou route.

Because of this inability to compete with the water lines, plaintiff obtained from the Commission a reopening of this decision rendered in 1927. On the new record made in 1927 and 1928, plaintiff, in order to show the reasonably compensatory nature of the lower rates between the terminals, including Portland, Oregon, and San Francisco, California, based its presentation on the transportation conditions and [fol. 24] cost of operation on the Cascade line or route, shown in solid blue on plaintiff's exhibit 23, between Black Butte, California, and Springfield Junction, Oregon, which had been completed since the 1922 hearings on the old applications.

The cost of hauling freight over the Cascade line or route between Black Butte, California, and Springfield Junction, Oregon, is substantially less than the cost of hauling freight over the Siskiyou route between Black Butte, California, and Springfield Junction, Oregon. The Cascade route is 24 miles shorter between these points than the Siskiyou route and substantially reduces the grades, curvatures, and operating difficulties encountered in the haul over the Siskiyou Mountains through Ashland, Medford, Grants Pass, and Roseburg, Oregon, on the Siskiyou route.

On the record made in 1927 and 1928 based on transportation conditions existing on the Cascade route referred to, the Interstate Commerce Commission granted plaintiff authority to maintain lower rates between the terminals, including Portland, Oregon, and San Francisco, California, than to intermediate points, subject to certain minimum rates and minimum differentials over the prevailing water rates with a provision that computation of the minimum rates which were based on mileage should be made over the operated routes via which the rates were to be applied. In December 1932 the Interstate Commerce Commission, in 190 I. C. C. 273, modified certain of these minimum rate provisions but not the requirement that the rates should be based over the line of operation via which the rates applied.

17. In the report and order of the Interstate Commerce Commission entered in July 1930, 165 I. C. C. 373, all existing Fourth Section orders granted plaintiff were cancelled and all existing applications of plaintiff denied, which necessitated the cancellation of the lower Fourth Section terminal or port rates which plaintiff had theretofore maintained in effect over the land grant line via Ashland, the Siskiyou route. In compliance with this decision of the Commission in 1930, plaintiff revised the entire rate structure between California and Oregon to conform with this Fourth Section decision. The Fourth Section rates author-[fol. 25] ized by the Commission between the terminals or ports, including Portland, Oregon, and San Francisco, California, were applied over the Cascade line or route, effective November 11, 1931.

The rates via the Siskiyou route, including those between Portland, Oregon, and San Francisco, California, were revised effective November 11, 1931, so as to remove prohibited departures from the provisions of the Fourth Section of the Interstate Commerce Act in the rates between the terminals or ports. Plaintiff established rates via the Siskiyou route between Oregon and California points, including Portland, Oregon, and San Francisco, California, and rates to, from, and between intermediate points on the Siskiyou route, which were lower than the rates theretofore found to have been reasonable on that line by the Interstate Commerce Commission. These were the rates in effect via the Siskiyou route during the period of the shipments in-

volved in this case, 1931-1932, between Portland or East Portland, Oregon, and San Francisco, California, and are now maintained by the plaintiff via the Siskiyou route.

18. During the period September 1, 1926, to November 10, 1931, the Fourth Section rates lower between the terminals or ports than to intermediate points were the same via both the Siskiyou and Cascade routes. On November 11, 1931, the very low rates between the ports via the Siskiyou route, previously established under the relief granted by the Interstate Commerce Commission, were discontinued and these port-to-port rates increased approximately 100 per cent, except that the lower rates via the Cascade Route also applied via the Siskiyou Route when that route was used by plaintiff for economical reasons. In the decision of the Interstate Commerce Commission in 1927, hereinbefore referred to, authorizing these Fourth Section terminal rates via the Siskiyou route, it was required that the rates at intermediate points should in no instance be more than 100 per cent higher than the rates contemporaneously in effect on like traffic between the ports.

19. In October 1931, prior to the revision of rates via Siskiyou and Cascade routes, effective November 11, 1931, plaintiff gave written notice to the Coordinator of Traffic of [fol. 26] the Federal Traffic Board of defendant in Washington, who was in charge of routing Government freight, of the proposed changes in rates via these routes, the manner in which same would be applied, and advised such Coordinator of Traffic that either the Siskiyou route or the Cascade route could and would be used and that the plaintiff would respect the Government's routing as to either line. Further, that the Fourth Section terminal rates via the Cascade route less the land grant deductions via that route that would be available would make a less net charge to the Government than the use of the rates applicable via the Siskiyou route. Receipt of this communication was acknowledged by the Coordinator of Traffic in October 1931.

20. On approximately 75 per cent of the traffic transported by plaintiff on the routes between Oregon and California, the lawfully published and effective tariff rates are, and have been since 1931, the same via both the Siskiyou and Cascade routes, including rates between Portland or East Portland, Oregon, and San Francisco, California. On

approximately 25 per cent of such freight traffic, the lawfully published and effective tariff rates via the Cascade route have been since 1931 and are now lower than via the Siskiyou route. The plaintiff sought from the time prior to 1926 to 1931 to secure authority from the Interstate Commerce Commission to put in very low rates between the terminals to compete with the water lines. A very small percentage of freight traffic of plaintiff between Portland or East Portland, Oregon, and San Francisco, California, is Government business. A substantial part of such shipments of defendant moves on rates which are the same via both the Siskiyou and Cascade routes.

21. The shipments of defendant described in finding 2 were transported by the plaintiff between Portland or East Portland, Oregon, and San Francisco, California, via that part of the Cascade Route described in finding 6 between Portland or East Portland, Oregon, and Tehama, California, including the line shown in solid blue on plaintiff's exhibit 23 between Black Butte, California, and Springfield Junction, Oregon, via Klamath Falls, Kirk, Paunina, Cascade Summit, and Oakridge, Oregon, via the land grant [fol. 27] section of the line shown in solid red on plaintiff's exhibit 23 between Tehama, California, and Roseville, California, via the black or uncolored line between Roseville, California, and Davis, California, and via the line shown in solid blue on plaintiff's exhibit 23 between Davis, California, and San Francisco, California. As set out in finding 10, the lawfully published and effective tariff rates of plaintiff charged defendant for this transportation service did not apply via this line of movement between Tehama, California, and San Francisco, California, via Roseville, California. At the time of the movement of these shipments during the depression there was not enough traffic to divide over the two routes between Tehama, California, and San Francisco, California, and it was more economical to handle shipments through Roseville.

22. (a) If defendant is not entitled to greater land grant mileage proportion deductions than existed and exist on the Cascade Route, described in finding 6, via which the tariff rates charged were restricted and only applied, there is unpaid, due and owing the plaintiff from defendant the sum of $116.31 for the transportation of property of the defendant described in finding 2.

(b) If defendant is entitled to the additional land grant mileage proportion deduction for the land grant mileage between Tehama, California, and Roseville, California, via which these shipments were transported by plaintiff, but via which the tariff rates charged did not apply, there is unpaid, due and owing the plaintiff from the defendant the sum of $86.62 for the transportation of the property of the defendant described in finding 2.

(c) If the defendant is entitled to the percentages of deductions determined on the ratio of the land-grant miles to the total miles between Portland, Oregon, and San Francisco, California, and between East Portland, Oregon, and San Francisco, California, included in the Siskiyou Route described in finding 7, from the full amount of compensation computed on the basis of tariff rates applicable over and restricted to the Cascade Route described in finding 6 for like transportation performed for the public at large, plaintiff has been paid all it was entitled to receive for transporting the shipments described in finding 2.

[fol. 28] CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is not entitled to recover, therefore the petition is dismissed.

Judgment is rendered against the plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION

WILLIAMS, Judge, delivered the opinion of the court:

Plaintiff, at the times here material, owned and operated, and now owns and operates, two lines or routes of railroad between Oregon and California points, including Portland and East Portland, Oregon, and San Francisco, California, both of which lines or routes are maintained and operated by plaintiff for the transportation of passenger, freight, and all classes of traffic.

The two routes or lines of railroads owned and operated by the plaintiff are designated in the record, respectively,

as the Siskiyou Route and the Cascade Route. The Siskiyou Route is 774.86 miles between Portland, Oregon, and San Francisco, California, and runs in a southerly direction from Portland to Springfield Junction, Oregon, a distance of 126.84 miles, thence from Springfield Junction, Oregon, via Drain, Roseburg, Grants Pass, Ashland, and Siskiyou, Oregon, to Black Butte, California, a distance of 300.42 miles, thence from Black Butte to Tehama, California, a distance of 131.99 miles, thence from Tehama to Roseville, California, a distance of 104.61 miles, thence from Roseville westerly to Davis, California, a distance of 31.10 miles, thence from Davis, California, via Suisun and Martinez, California, to San Francisco, California, a distance of 79.90 miles, making the total distance between Portland, Oregon, and San Francisco, California, 774.86 miles and between East Portland, Oregon, and San Francisco, California, 774.16 miles.

Congress granted lands in aid of the construction of 663.16 miles of the Siskiyou Route, that portion of the [fol. 29] route between East Portland, Oregon, and Roseville, California. The other parts of the route were constructed without the aid of grants of land. The percentage of deduction, computed on the ratio of land-grant miles to the total miles included in the route is 42.792 percent between Portland, Oregon, and San Francisco, California, and 42.831 percent between East Portland and San Francisco.

The Cascade Route or line was completed by the plaintiff in 1926, and like the Siskiyou Route runs from Portland, Oregon, to San Francisco, California, a distance of 725.03 miles, and 724.33 miles between East Portland, Oregon, and San Francisco, California, there being .7 of a mile between Portland and East Portland, Oregon. The Cascade route or line includes 258.13 miles of the Siskiyou line, 126.14 miles between East Portland, Oregon, and Springfield Junction, Oregon, and 131.99 miles between Back Butte, California, and Tehama, California, being portions of that route which had been constructed by the aid of land grants. In other words the land-grant mileage of the Siskiyou line or route between East Portland and Springfield Junction, Oregon, and that part of the land-grant mileage between Black Butte, California, and Tehama, California, are common to both the Cascade and the Siskiyou Routes. The other parts of the Cascade Route or line were not constructed with the aid of land grants and are not land-grant

lines. The percentage of deduction, computed on the ratio of land-grant miles to the total miles included in the Cascade Route is 17.801 percent between Portland, Oregon, and San Francisco, California, and 17.819 percent between East Portland and San Francisco.

During December 1931 and January 1932, plaintiff transported certain property of the United States, on Government bills of lading, for the Quartermaster Corps, U. S. Army, War Department, and for the Department of Commerce, Bureau of Lighthouses, as follows:

(a) 2 carloads of bran from East Portland, Oregon, to San Francisco, California, on Government bills of lading WQ 278505, dated December 18, 1931, and WQ 278511, dated December 21, 1931, Southern Pacific Company Bill No. F 9824.

[fol. 30] (b) 2 crates of derrick booms, with winches and attachment parts and counter weights, from East Portland, Oregon, to San Francisco, California, on Government bill of lading WQ 332281, dated December 19, 1931, Southern Pacific Company Bill No. F. 10026.

(c) 26 cylinders gas, H. P., pinch, steel (or iron), not plated, over 25 pounds pressure, under red label, from Portland, Oregon, to San Francisco, California, on Government bill of lading C 42376, dated January 20, 1932, Southern Pacific Company Bill No. F 10349.

(d) 26 cylinders gas, H. P., pinch, steel (or iron), not plated, 25 pounds or less pressure, under white label (empty) from San Francisco, California, to Portland, Oregon, on Government bill of lading C 42375, dated January 4, 1932, Southern Pacific Company Bill No. F 10350.

These five shipments were selected by the plaintiff as typical of numerous other shipments, set out in its petition, and are presented by plaintiff as sufficient to cover the entire matter at issue between the plaintiff and the defendant, and were selected by plaintiff for this purpose in order to shorten presentation of the issues to the court.

The shipments were unrouted by the shipper representatives of the defendant as to any particular line of railroad of the plaintiff between East Portland or Portland, Oregon, and San Francisco, California, the points of origin and destination of the shipments. At the time of the movement

of these shipments, there was not enough traffic to divide over the two routes between Tehama, California, and San Francisco, California, and it was more economical to handle shipments through Roseville, California. These shipments were therefore transported via that part of the Cascade Route between Portland or East Portland, Oregon, and Tehama, California, and that part of the Siskiyou Route between Tehama, California, and San Francisco, California, via Roseville, Davis, and Suisun, the part of the route between Davis, California, and San Francisco, California, being also part of the Cascade Route.

From the time the Cascade Route was completed in 1926 to November 10, 1931, the rates in effect between Portland, Oregon, and San Francisco, California, were the same over [fol. 31] both the Cascade and the Siskiyou Routes, and charges for services performed for the Government over either route were computed at tariff rates less land-grant deductions determined on the ratio of land-grant miles to the total miles included in the Siskiyou Route. In the meantime, for reasons stated in detail in the Findings, unnecessary to be restated here, plaintiff secured authority from the Interstate Commerce Commission to increase the existing rates (in some instances 100 percent) over the Siskiyou Route and reduce the rates over the Cascade Route. After this change in rates had become effective, on about 25 percent of the freight traffic transported by plaintiff on these routes the lawfully published and effective tariff rates by the Cascade Route were lower than via the Siskiyou Route, while on approximately 75 percent of the freight transported by plaintiff on the two routes the lawfully published and effective tariff rates were and are the same via both the Siskiyou and the Cascade Routes. The particular shipments in question came within the 25 percent on which the applicable rates via the Cascade Route were lower than the applicable rates via the Siskiyou Route between the points of origin and destination of the shipments.

Plaintiff had notified the defendant of the proposed change in rates and that either route would be used for Government shipments, but that the lower rates less land-grant deductions for the land-grant mileage in the Cascade Route would be available and make a net less charge to the Government than the use of the increased rates less land-grant deductions via the Siskiyou Route.

The plaintiff in its bill to the defendant assessed charges for the transportation of the shipments involved on the basis of the lowest published and effective rates applicable via the Cascade Route less land-grant deductions determined on the ratio the land-grant mileage of the Cascade Route bore to the total mileage of that route. The defendant through the General Accounting Office made settlement, as it had previously done since the completion of the Cascade Route, on the basis of the lowest published and effective tariff rates for such shipments applicable via the Cascade Route less land-grant deductions determined on the [fol. 32] ratio of land-grant miles to the total miles in the Siskiyou Route.

This suit is for the recovery of the difference in charges claimed, computed at tariff rates applicable via the Cascade Route less land-grant deductions determined on the ratio of land-grant miles to the total miles in the Cascade Route, and the amount paid by the defendant at the same rates via the Cascade Route less land-grant deductions determined on the ratio of land-grant miles to the total miles in the Siskiyou Route.

The method of settlement with plaintiff used by the General Accounting Office in this case has been consistently and uniformly followed by the defendant's accounting officers for more than fifty years in cases involving the same or similar questions. The principle was stated by the second Comptroller of the Treasury in a decision April 17, 1888, as follows:

If a railroad have a line between two points, aided in whole or in part, and subsequently acquire a new line or lines nonaided between those same points, the accounts for Government transportation, when performed over the new line or lines, shall be stated in the same proportion of aided to nonaided as though the transportation were over the original line.

This rule as stated has been uniformly observed in the settlement of accounts for government transportation of property and troops of the United States, and has been applied in settlement of accounts for transportation rendered the Government where through service has been rendered by a shorter line substituted in whole or in part for the longer aided and original line. (See stipulations of the

parties in United States v. Northern Pacific Railroad Co., 30 Fed. (2d) 655). This long established rule has been acquiesced in by land-grant railroads generally and was acquiesced in by this plaintiff during the period between the completion of its Cascade line in 1926 to 1931 when its accounts against the Government for the transportation of Government property were settled in this manner. It was not until the shipments involved in this suit were moved that plaintiff made protest against the position of the Government. We do not regard the fact the rates between [fol. 33] San Francisco and Portland were the same over both routes between 1926 and 1931 as material or altering in any way the principle involved.

While this administrative construction is not binding on the plaintiff or the court, and it is the duty of the court to determine the rights and obligations of both the plaintiff and the Government by the provisions of the Act of Congress making the grant of lands, yet the rule of law is well established in decisions too numerous for citation here that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous. The rule is fortified when the administrative construction has been acquiesced in for a like period by the adverse or opposite party as the land-grant railroads have done in this case.

The method of settlement used by the Comptroller General in this case was approved in United States v. Northern Pacific Railway Co., supra. The plaintiff in that case owned and operated a through line of railroad between St. Paul, Minnesota, and Seattle, Washington, which has been constructed by the aid of Federal land grants. Subsequent to the construction of the road plaintiff built certain cut-offs without the aid of land grants which straightened and shortened the length of the road. Through traffic was routed over the line thus straightened and shortened. The Government in making settlement with the railroad company for certain transportation made land-grant deductions on the basis of the original land-grant mileage. The railroad company contended that the land-grant deductions should be based on the original land-grant mileage less the non-land-grant mileage of the cut-off sections. The court sustained the method of settlement made by the Government

and allowed the land-grant deductions on the basis of the original land-grant mileage. The court said:

For its own convenience in competition with other roads, and perhaps for other reasons, it has shortened its line by 47.64 miles and over the line thus shortened or straightened it routes all its through traffic.

* * * * * * *

[fol. 34] The amount at stake in the case at bar is inconsiderable, but the principle involved is far-reaching in its potential consequences. If the slight deviations from the recognized land-grant route, brought about by these cut-offs, be accepted as the establishment of a new route, partially absolved from land-grant reductions in fares, it would be easy, under the rule thus laid down, by degrees to whittle away the reserve rights of the Government.

One of the undoubted purposes of the plaintiff in the construction of the Cascade Route was the establishment of an alternate line between San Francisco and Portland over which through traffic could be handled more expeditiously and economically than over its existing Siskiyou Route. It was obviously plaintiff's intention to use the new segments or cut-offs between Springfield Junction and Black Butte via Klamath Falls, and between Tehama, California, and San Francisco via Davis, for through traffic in lieu of the land grant parts of the Siskiyou Route between Portland and San Francisco which lie between Black Butte and Eugene, Oregon, via Ashland, and between Tehama and Roseville, practically abandoning through traffic thereon, and that is exactly what happened. When plaintiff for economical reasons issued instructions, as shown in Finding 15, to route all through shipments moving between San Francisco and Portland over the Cascade Route between Eugene and Black Butte via Klamath Falls, and between Tehama and San Francisco via Davis, 1,275,000 tons of southbound traffic and 250,000 tons of northbound traffic a year were diverted from the Siskiyou Route to the Cascade Route. While the land-grant portions of the Siskiyou Route between Springfield Junction and Black Butte via Ashland, and between Tehama and Roseville, have not been abandoned by the plaintiff and have been kept in good repair and are open for through traffic between San Francisco and Portland, the practical effect of the tariff provisions restricting the application of the lower scale of rates via

the Cascade Route is to force shippers, including the United States, to use the Cascade Route except in unusual and rare instances. There could be no inducement to a shipper to use the route via the old land-grant line in view of excessive rates and plaintiff's general routing practice in [fol. 35] operating its manifest or through train service over the Cascade Route with only local train service scheduled and operating over the Siskiyou Route.

Plaintiff in our opinion may not deprive the Government of its lawful land-grant deductions from charges for transportation for through shipments between San Francisco and Portland accruing to it on account of land grants made in the construction of its Siskiyou line by routing the shipments over new segments or cut-offs connecting with that line, constructed without the aid of land grants. If it is permitted to do that it may continue to construct new segments without the aid of land grants until an entirely new line constructed without any aid of land grants parallels the Siskiyou line from San Francisco to Portland, thus depriving the Government of its entire land-grant deductions for services that should be furnished between San Francisco and Portland over the old route.

For the reasons stated we think the method used by the General Accounting Office in making payment to plaintiff for its services in transporting the shipments in question was correct and proper and that plaintiff has been paid all that it is entitled to receive. In any event we are not prepared to overturn the long established administrative method used in making like settlements with land-grant railroads.

Plaintiff is not entitled to recover and the petition is dismissed. It is so ordered.

Whaley, Judge; Littleton, Judge; Green, Judge; and Booth, Chief Justice, concur.

[fol. 36]

VI. Judgment

At a Court of Claims held at the City of Washington on the 6th day of June, A. D., 1938, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is not entitled to recover.

It is Therefore Adjudged and Ordered that the plaintiff's petition be and the same is hereby dismissed.

VII. Proceedings After Entry of Judgment

On July 19, 1938, the plaintiff filed a motion for a new trial.

On November 14, 1938, the court entered the following order on said motion:

Order

It is Ordered this 14th day of November, 1938, that the plaintiff's motion for new trial be and the same is overruled.

[fol. 37] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 38] Supreme Court of the United States

Stipulation to Dispense with Printing of Exhibits—Filed January 25, 1939

It is hereby stipulated and agreed by and between the parties hereto that plaintiff's Exhibit 23, made a part of Special Findings of Fact 5 of the Court of the Claims and plaintiff's Exhibit 1 and page 517 thereof, made a part of such Special Findings of Fact 10 by reference, need not be printed, it being agreed, however, that nine copies of said Exhibit 23 will be filed by the petitioner for the use of the Court in considering the petition for certiorari.

Robert H. Jackson, Solicitor General of the United States. James R. Bell, Counsel for Southern Pacific Company, Petitioner.

Dated, Washington, D. C., January 25, 1939.

[fol. 39] [File endorsement omitted.]

Endorsed on cover: File No. 43,098. Court of Claims. Term No. 613. Southern Pacific Company, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed January 24, 1939. Term No. 613, O. T., 1938.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 6, 1939

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the procedings below which accompanied the petition shall be treated as though filed in response to such writ.